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UNCLAS SECTION 01 OF 03 DILI 000428

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SENSITIVE

DEPT FOR EAP/MTS  
PACOM FOR POLAD AND JOC  
NSC FOR HOLLY MORROW  
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SUBJECT: FRETILIN FACTIONS RESPOND TO COURT DECISION AFFIRMING  
ALKATIRI'S ELECTION

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¶1. (U) Summary: The Court of Appeals this week issued its official decision rejecting the argument that the re-election of Mari Alkatiri and Francisco "Lu'olo" Guterres to the Fretilin party leadership at the party congress in May was illegal. The case was brought by members of Fretilin's internal opposition group, "Fretilin Mudansa", who claimed that by instituting a public show of hands for the leadership elections, the Party had violated the Political Party Law's requirement for a secret ballot. The Court held that the petition was filed too late, applying a provision of the Civil Procedure Code that requires parties to a civil case to file procedural objections within ten days. The bulk of the Court's 18-page decision, however, attempts to show that the Political Party Law did not require a secret ballot to be held at the convention, so that the

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petitioners would have lost on the merits even if their complaint had been timely filed. Both parts of the Court's decision have been harshly criticized by Timorese and international legal analysts. Alkatiri and other members of the current Fretilin leadership have responded enthusiastically to the decision, citing it as evidence that prior criticism of the show-of-hands vote by President Xanana Gusmao and others was unfounded and politically motivated. The Fretilin Mudansa group, while disappointed, does not appear to have been surprised by the verdict and is redirecting its energies to a political campaign directed at bringing about an extraordinary congress to elect new leadership. End summary.

Court of Appeals rejects Fretilin opposition group's case  
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¶2. (U) On August 14, the Court of Appeals issued a decision that the re-election of Mari Alkatiri and Francisco "Lu'olo" Guterres to the leadership of the ruling Fretilin party by a show of

hands at the party congress in May was legal. The decision was in response to a case brought by members of Fretilin Mudansa, a faction within the ruling Fretilin party that opposes the leadership of Mari Alkatiri. ("Mudansa" in this context means "change" or "reform".) The Mudansa group had put forward Jose Luis Guterres, then East Timor's Ambassador to the United Nations and now Foreign Minister, to run against Alkatiri at the May congress, and many observers expected him to win. However, he withdrew from the race in protest when the delegates voted to abolish the secret ballot and hold elections by a public show of hands, a move seen by many as facilitating widespread bribery and intimidation by the pro-Alkatiri faction (see reftels).

¶3. (U) Last month the Fretilin dissidents filed a case claiming that the election violated Article 18c of the Political Party Law, which provides that party leaders "can only be elected by means of a direct and secret vote of all party members or of an assembly representing them".

¶4. (U) The Court's decision was based not on the Political Party Law but rather on the Civil Procedure Code, stating simply that it could not adjudicate the case because it was filed past the time limit stipulated in the Code of Civil Procedure. (Comment: Contrary to the court's opinion, the code article in question appears to apply only to interlocutory motions in ongoing cases. It does not purport to create a prescriptive period --- in common law terminology, a "statute of limitations" --- after which a party aggrieved by some action or event is barred from bringing a lawsuit. Such prescriptive periods are typically measured in years rather than days. End comment.)

¶5. (U) After holding that the action was barred because it was filed too late, the Court went on to state its opinion that the petitioners (plaintiffs) would not have prevailed on the merits even if they had filed their action on time. The Court noted that article 18c of the Political Parties Law gives parties two options for electing national leaders: election by all party members, or election by an assembly representing party members. The Court held that the "direct and secret vote" requirement applies only to elections by all party members, not to elections

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by an assembly. (Comment: Contrary to the Court's opinion, the language of article 18c requires "a direct and secret vote of all party members or of an assembly representing them." The words "or of" preceding "an assembly representing them" ("ou de assembleia deles representativa" in the original Portuguese) can only refer back to the phrase "a direct and secret vote." End Comment.)

¶6. (U) Finally, the Court held that even if the action had been timely filed and even if the show of hands was illegal, it had no power to order the remedy requested by petitioners, an extraordinary party congress at which a secret ballot would be held to elect new leaders. The Court also briefly addressed other allegations by petitioners, including that the leadership elections at the last Fretilin Congress in 2001 were by secret ballot and that the show-of-hands ballot at the recent Congress was part of a pattern involving bribery and intimidation of delegates, as irrelevant to the legal case.

Decision provokes further criticism of Court of Appeals President

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¶7. (SBU) The decision has been subjected to harsh criticism both by Timorese lawyers and by international observers in Dili. Much of this criticism is directed personally at the decision's apparent author, President of the Court of Appeals Claudio Ximenes, who has been accused in the past of shoddy decisions tending to favor the position taken by former Prime Minister Alkatiri. In particular, most observers read the plain language of article 18c as clearly requiring a secret vote either of all party members or of a representative assembly. (See paragraph 4 above.) For instance, Dionisio Babo Soares, the co-chair of the bilateral Truth and Friendship Commission who is a trained lawyer, told Emboff the decision was "stupid" but consistent

with many other decisions made by Claudio Ximenes, the Court's President (chief judge). Soares noted that there is increasing concern among both East Timorese and internationals that Ximenes, a Portuguese judge of Timorese extraction who has been serving as East Timor's chief judge since 2003 while on leave from his position in Portugal, not only makes key decisions based on political rather than legal exigencies, but that he produces low-quality and incoherent arguments. Other Timorese lawyers, as well as Dili-based foreign diplomats and United Nations lawyers, have made similar comments to Emboffs.

16. (SBU) Because the Court of Appeals is the highest court in the country pending the establishment of a Supreme Court, there is no further legal recourse available to the petitioners except possibly a motion for rehearing or reconsideration before the three judges who signed the unfavorable decision. In addition to Judge Ximenes, the decision was signed by Judge Jacinta Da Costa and Judge Maria Natercia Gusmao, both Timorese "trainee judges." (See Ref \_\_\_\_). Although both Judge Da Costa and Judge Gusmao are regarded as intelligent and fair-minded, both are still in the process of achieving fluency in Portuguese, the language in which the decision was written. Some observers also speculated that their status as probationary judges supervised by a committee headed by Judge Ximenes may have made them reluctant to oppose what appears to have been his strongly held view in this matter. Nevertheless, it is not out of the question that a rehearing, with briefing and argument focused on the two points discussed in paragraphs 3 and 4 above, might result in a reversal of the Court's decision. Embassy has not yet been able to learn whether the petitioners intend to request reconsideration or rehearing.

Alkatiri triumphant  
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16. (U) Alkatiri and his political allies have demonstrated that they regard the Court decision as a clear political victory. Alkatiri appeared at a press conference on August 16 with Lu'olo in his first public appearance since he spoke to pro-Fretilin

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demonstrators shortly after his resignation in late June. The press release issued at the press conference described the decision as reinforcing Fretilin's strength as a party with wide popular appeal. During questioning by journalists, Alkatiri emphasized that the decision reaffirms the legitimacy of the current leadership. There was wide media coverage the next day of the press conference and especially of Alkatiri's statement that President Xanana Gusmao, who has argued vigorously that the show-of-hands vote was in violation of the Political Party Law, "lacks the competency" to interpret the law.

Fretilin reformers unbowed  
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17. (U) Although members of the Fretilin Mudansa group have acknowledged the decision as a setback, they add that they were not taken by surprise. They argue that the legal decision does not remove the political need for an extraordinary congress to readdress the party leadership issue. Specifically, they argue that the criminal allegations against the party's Secretary General (Alkatiri) and Vice President (former Minister of Interior Rogerio Lobato) represent a crisis of leadership for the party regardless of the legal issues. Egidio de Jesus, a former Alkatiri cabinet member who is now a Fretilin Mudansa leader, and other Fretilin reformers have responded to Alkatiri's victory speech by declaring that if Alkatiri is still Secretary General at the time of the 2007 elections, Fretilin

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will lose.

18. (U) In a conversation with Emboff last week, Aderito Soares, one of the petitioners in the case, said the group has already begun to collect signatures from party members in support of an extraordinary congress. He said the reform group has a large

number of signatures already and that he believes recent events have significantly expanded their support base within the party.

He reported that the group has recently held meetings in a number of districts as well as a meeting over the weekend in Dili.

19. (SBU) Comment: The Mudansa group appears to be demonstrating greater political maturity and strategic thinking than they did at the party congress where they neither planned for a possible setback nor responded effectively when it arose. In contrast, they are currently proceeding with a political mobilization for which they had already prepared in anticipation of a decision against them. Although Alkatiri and his allies will undoubtedly be as deft and tenacious in resisting calls for an extraordinary Congress as they have been in their previous efforts to keep control of the party machinery, the Mudansa group's determination --- coupled with the strong possibility that Alkatiri will soon be indicted for serious crimes that might include conspiracy to commit murder --- suggest that the political struggle within Fretilin will continue. End comment.  
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